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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 92-316
RIVERTOWN COMMUNICATIONS CO. INC.)	File No. <u>BFH-911008ME</u>
SAMPLE BROADCASTING COMPANY, L.P.)	File No. BFH-911010MA
For Construction Permit)	
for a new FM Station on)	
Channel 282C3 in Eldon, Iowa)	

To: Administrative Law Judge
John M. Frysiak

PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW OF
SAMPLE BROADCASTING COMPANY, L.P.

Respectfully Submitted,

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August 16, 1993

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Table of Contents

Table of Contents	i
Summary	ii
Preliminary Statement	1
Findings of Fact	2
Standard Comparative Issues	2
Sample Broadcasting Company, L.P.	2
Rivertown Communications Company, Inc.	7
Sample's Basic Qualifying Issues	13
Conclusions of Law	38
Sample's Basic Qualifying Issues	38
Delay action upon or grant of Rivertown's Application	39
Control Issues	41
Programming Issue	49
Misrepresentation Issue	51
Standard Comparative Issues	52
Diversification	52
Integration	55
Ultimate Conclusions	65

SUMMARY

In addition to the standard comparative issues, Sample Broadcasting Company, L.P., faces basic qualifying issues. All basic issues must be resolved in Sample's favor. It has shown that it filed its application in order to acquire a radio station and not for purposes of delaying action upon the application of Rivertown Communications Company, Inc. Neither O-Town Communications Company, nor any of its principals, have or will have any control over Sample's application or its Eldon station. Bruce Linder is a properly insulated limited partner who had no participation in preparing, filing or prosecuting Sample's application. Carmela Sample-Day is a career broadcaster who was acquainted with Bruce Linder prior to forming their partnership. She has been in full charge of preparing and prosecuting the Sample application and has shown that she will be in complete control of the Eldon station. Sample will conduct itself in full accord with its represented two-tier structure.

In the comparative evaluation, Sample receives no diversification demerit, while Rivertown receives a slight demerit. Sample is the only applicant meriting 100% integration credit. Rivertown receives 55% credit for David Brown's proposed integration and none for Ellen Bowen's. Mrs. Bowen will not have a policy-making, managerial position at the Eldon station, therefore, she does not merit any integration credit under the Commission's 1965 Policy Statement on comparative hearings.

Accordingly, Sample is fully qualified to receive a grant and is the comparatively-favored applicant. Its application must be granted.

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PROPOSED FINDINGS OF FACT AND CONCLUSION OF LAW FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

1. Sample Broadcasting Company, L.P., (herein "Sample")
by its attorney, respectfully submits its Proposed Findings of
Fact and Conclusions of Law in the above-captioned proceeding.
As shown herein, Sample is fully qualified and its application
is comparatively superior. It should be granted.

I. Preliminary Statement

2. By Hearing Designation Order (Eldon, Iowa), 8 FCC Rcd
469 (Mass Med. Bur. 1993) ("HDO") the Commission designated
for hearing the mutually exclusive applications of Sample and
Rivertown Communications Company, Inc., (herein "Rivertown")
for a construction permit for a new FM station on Channel
282C3 in Eldon, Iowa, on the standard comparative issues.

3. By Memorandum Opinion and Order, FCC 93M-124, released
March 26, 1993, the Presiding Judge added the following issues
against Sample:

1. To determine whether the application of Sample
Broadcasting was filed for the purpose, in whole or
in part, of delaying action upon and grant of the
application of Rivertown Communications Company,
Inc.
2. To determine whether O-Town Communications,
Inc., and/or any of its officers directors, and
stockholders, is a real party-in-interest to the
application of Sample Broadcasting.
3. To determine the extent of the involvement of
Bruce Linder in the planning and development of the
application of Sample Broadcasting.
4. To determine the programming intentions of
Sample Broadcasting, with particular reference to
potential duplication of the programming of Station
KKSI-FM.

5. To determine, in light of the evidence adduced under the foregoing issues, whether the application of Sample Broadcasting affirmatively misrepresents material facts, or knowingly conceals material facts.

6. To determine, in light of the evidence adduced under the foregoing issues, whether Sample Broadcasting possesses the basic qualifications to be a Commission licensee.

4. These six issues were based on alleged statements made by Mark McVey to David Brown, a principal of Rivertown, and David Collins. The ALJ noted that McVey, an officer, director and 20% equity holder of O-Town, pleaded inability to recall making certain statements and, therefore, the statements warranted investigation.

5. A prehearing conference was held March 22, 1993. An admissions hearing session was held May 25, 1993. Hearing sessions were held June 22-23, 1993, on all issues. The record was closed June 23, 1993.

II. Findings of Fact

A. Standard Comparative Issues.

SAMPLE BROADCASTING COMPANY, L.P.

6. Sample is a limited partnership comprised of Carmela Sample-Day ("Sample-Day") as its sole general partner (40% equity) and Bruce Linder ("Linder") as its sole limited partner (60% equity). Sample Ex. 4.

7. Sample holds no ownership or control of any medium of mass communications. Sample Ex. 1.

8. Sample-Day is currently the News Director at KKSI(FM),

Eddyville, Iowa. She timely committed to resign that position in Sample's construction permit application, and reaffirmed that commitment at hearing. Linder is the 49% general partner of Rogers Broadcasting Company, permittee of FM station KXAC St. James, Minnesota; a 25% voting shareholder, officer and director of O-Town Communications, Inc., licensee of FM station KKSI Eddyville, Iowa. He also holds a 9.53% voting interest in Minnesota Valley Broadcasting Company, licensee of AM station KTOE Mankato, Minnesota, and KDOG(FM) North Mankato, Minnesota. Minnesota Valley Broadcasting Company owns 100% of the voting stock of KMHL Broadcasting Company, licensee of KMHL(AM)/KKCK(FM) Marshall, Minnesota, and KARL(FM) Tracy, Minnesota; and owns 49% of the voting stock of Waite Park Broadcasting Company, permittee of a new FM station at Glencoe, Minnesota. Sample Exs. 1, 4.

9. Sample's limited partnership agreement states that its general partner has full and exclusive charge and control of the management, conduct and operation of the partnership in all respects and sole control over the day-to-day operations of the radio station. The Agreement provides that the limited partner has investment rights only, and shall not be involved in the management or operation of the partnership's enterprises, act as an employee of the limited partnership, serve in any material capacity as an independent contractor or agent of the partnership, communicate with the general partner on matters pertaining to the day-to-day operations of the

partnership business, vote on the removal of the general partner, perform any services and shall take no part in or interfere in any manner with the management, conduct or authority of the partnership business and shall have no right or authority to act for or by the partnership. Sample Ex. 1, pages 6-7.

10. Sample-Day will be the general manager of the new Eldon radio station, working a minimum of 40 hours per week (full time) there. She will be in charge of all aspects of the station's operation, including but not limited to, setting all station policies, hiring and firing personnel, verifying all accounting books and assuring compliance with all federal and local laws and regulations. She will supervise all employees and will oversee the entire day-to-day operation of the station. Prior to the Eldon station commencing broadcast operations, she will resign any employment she may have in order to work full time at the new radio station. She has no other business commitments. Sample Ex. 4.

11. Sample-Day will claim minority enhancement credit as an Hispanic. Her mother and maternal grand-parents are full-blooded Hispanics, born in Mexico. She was born and spent the early part of her childhood approximately 30 miles from Eldon, moving to Mexico and becoming a full-time resident there in 1971. She attended I.T.E.S.O. college in Guadalajara, Mexico, and graduated in 1985 with a four-year degree in Communications. She speaks fluent Spanish and considers it to be her

primary language with English as a second language. She recently accepted an on-call volunteer position assisting with a Spanish/English translation program for the local Iowa court system. Sample Ex. 2, 4, TR 110, 111.

12. Sample-Day worked at KIOA(TV) Ottumwa, Iowa, during the first quarter of 1990, however, she was not listed as an Hispanic employee on the FCC Form 395-B 1990 Annual Employment Report filed by the TV station during that period. Sample-Day told the President and General Manager of the KIOA licensee that her mother was Mexican, and she does not know why the station failed to properly report her minority status on the employment report. Rivertown Ex. 16, TR. 121.

13. Sample-Day has resided in Ottumwa, Iowa, within Sample's proposed service area (1 mV/m contour), since November 1988. In the event Sample's application for Eldon is granted, Sample-Day will move her residence to within the Eldon, Iowa, city limits prior to commencing program test authority. Sample Ex. 4.

14. Sample-Day has the following civic experience within Sample's proposed service area.

United Cerebral Palsy Telethon: volunteer camera work and phone assistance for live television broadcast over station KOIA-TV. Ottumwa, Iowa; Winter 1988 for approximately 12 hours.

Created and produced Drug Series for television: Dealt with the issues of illegal drug sales, drug abuse and the public services available for drug addicts in southern Iowa. Her involvement covered a period of about one week in October 1989 with an average of thirty hours spent directly on the program.

Created and produced a 30 minute T.V. show about farmers in southern Iowa: Dealt with developments in farming techniques, the effect of the competition between big and small operation farmers and the extent to which farmers rely on government subsidies to make a living. Her involvement in the project covered a period of about one week with an average of 25 hours spent directly on the program, October 1989.

Created and produced a 30 minute T.V. show about teenage pregnancy in southern Iowa: Dealt with the incidence, attitudes, responses and government programs surrounding teenage pregnancy in southern Iowa. Her involvement covered a period of about two weeks with an average of fifty hours per week spent directly on the program. April 1990 and September 1990 through November 1990.

Grand opening of a new business. Invited as volunteer host and judge of a pet show. Fairfield, Iowa; May 1990 for a period of about three hours.

Muscular Dystrophy Association: Master of Ceremonies for local talent show. Ottumwa, Iowa; September 1990 for a period of about eight hours.

Oktoberfest: Participated in the parade and volunteered in the food tent, Ottumwa, Iowa. This activity was for the benefit of all of Wapello County. September 1990 for a period of one day.

Sample Exs. 2, 4.

15. Sample-Day's broadcast experience is as follows:

May 1982 - Nov. 1988	Jorge Corres, Guadalajara, Mexico Translator/Script & Audio Producer for radio and television.
Nov. 1988 - Feb. 1989	News/Production Volunteer
Feb. 1989 - Aug. 1990	News Reporter/Anchor KOIA-TV Ottumwa, Iowa
Oct. 1990 - Present	KKSI(FM) Eddyville, IA News Director

Sample Ex. 4.

16. She was the first news director at KKSI and is responsible for establishing all policy in the news and public

affairs programming area, subject to the oversight of the station general manager. She prepares and maintains the station's Quarterly Issues and Programs reports. As a department head, she coordinates with the programming, engineering and sales departments. She hired and supervised a part time employee in the news department and is responsible for scheduling air-shift replacements for herself when she must be away from the station. As a result of the signal coverage of KKSI, Sample-Day is responsible for gathering, writing and reporting news events from sixteen counties, which has given her special insight to the needs and interests of the people in Southeastern Iowa. Sample Ex. 2

17. Sample will install an auxiliary power source at its transmitter site so that the new station may continue to operate in the event of a failure of commercial power. Sample Ex. 4, TR 183.

RIVERTOWN COMMUNICATIONS COMPANY, INC.

18. David W. Brown ("Brown") is the President and a Director, owning 55 shares of voting stock (55% equity). Ellen M. Bowen ("Bowen") is the Secretary, Treasurer, Vice President, and a Director owning 45 shares of voting stock (45% equity). Rivertown Ex. 1. This equity stock split was suggested by Brown, no other equity split was considered by the principals. TR 48.

19. Neither Rivertown nor either of its stockholders has

any interest in any medium of mass communications. Rivertown Ex. 1.

20. Brown commenced work as the general manager of WAIK(AM) and WGBQ(FM) Galesburg, Illinois, on May 6, 1992. TR 84. Rivertown first reported this employment to the Commission through an amendment filed July 7, 1992. The amendment contains Brown's pledge to resign this position in the event of the grant of Rivertown's application. Sample Ex. 7, TR 85-86. The last day to file amendments as of right in the Eldon proceeding was March 2, 1992. TR 88.

21. Rivertown claims a "pioneer's preference" for having successfully proposed the allotment of Channel 282C3 to Eldon in January 1991. Rivertown Ex. 1.

22. Brown proposes to be the full-time (40 hours per week) General Manager of Rivertown's proposed Eldon station. As General Manager, he will oversee every aspect of station operations. He will resign his current position as manager of FM Station KKMI, Burlington, Iowa, following the grant of Rivertown's application and prior to the commencement of operation of the Eldon station. Rivertown Ex. 2.

23. Brown was born within Rivertown's proposed service area on August 13, 1961, and lived there until September 1983. He returned to Rivertown's service area in December 1984, remaining until July 1986. He again resided in the service area from April 1987 to December 1990. Rivertown Ex. 2. His service area residence from 1984 to 1986 was not identified in

Rivertown's application on the amendment-as-of-right date in this proceeding.¹

24. In October 1991, Brown purchased a residence in Eldon and lived there from March 1992 to May 1992. He currently spends most weekends and occasional holidays there, and will make it his full-time residence following grant of Rivertown's application. He resided outside of Rivertown's service area, from August 1991 to March 1992, from May to September 1992, and from September 1992 to the present. Rivertown Ex. 2.

25. Brown's civic activities in Rivertown's proposed service area include:

Membership on the Wapello County Cancer Society Board, 1982-1983.

Recipient, in 1982, of the Silver Award from the Wapello County United Way for "Outstanding Service to the People of Our Community".

Member of the Board of Care and Share, an Ottumwa non-profit organization, 1982-1983.

Promotion of fund-raising activities for new uniforms for the Ottumwa High School Bank, 1982.

Served as Chaperon to the Great Western Expedition, a community kids challenge project (Ottumwa), 1982.

Member of the Fairfield/Jefferson County Isaac Walton League, 1988-1989.

Member of the Fairfield Jaycees, 1989.

26. None of these activities were identified in River-

¹ Rivertown's integration exhibit from its construction permit application, as it existed on March 2, 1992, is attached hereto as an exhibit. Official notice is requested therefore as a document filed by Rivertown with the Commission.

town's construction permit application on the amendment-as-of-right date.²

27. Brown was a staff announcer at Stations KLEE(AM&FM), Ottumwa, from August 1977 to October 1979. He was employed by KBIZ(AM), Ottumwa, from December 1979 to January 1983, first as staff announcer and later as public service director; then staff announcer and salesman with KLEE(AM&FM) from January 1983 to September 1983; then a similar position with KNIA(AM), Knoxville, Iowa, from September 1983 to November 1984. Rivertown Ex. 2.

28. He was employed as Sales Manager/staff announcer at KLBA(AM), Albia, Iowa, from November 1984 to March 1985, when he was hired by Stations KXJX/KFMD at Pella/Des Moines as Staff Announcer and salesman and later Operations Manager, remaining there through July 1986, when he moved to KRIT-FM, Clarion/Ft. Dodge, Iowa, as staff announcer, Operations and Program Director, and Interim Manager until March 1987. Rivertown Ex. 2.

29. In June 1987 he was employed by KMCD(AM&FM), Fairfield, Iowa, as Operations and Program Director, and later General Manager, remaining until July 1989. He was Program Director and staff announcer at KXOF-FM, Bloomfield, from February 1990 to September 1990. Rivertown Ex. 2.

30. From January 1991 to August 1991, he was Public Affairs Director and staff announcer at KBKB(AM&FM), Fort

² See Attachment 1, hereto.

Madison, Iowa, resigning to become general manager of KKMI (FM), Burlington, Iowa, where he was employed from August 1991 to March 1992, and from September 1992 to the present. From May 1992 to September 1992, he was General Manager of Stations WAIK(AM) and WGBQ-FM, Galesburg, Illinois. Rivertown Ex. 2.

31. Bowen proposes to be the full-time Business Manager of the station, for a minimum of 40 hours per week. Rivertown Ex. 3 She testified at hearing that her duties at the Eldon station will be substantially the same as her duties when she was employed at KIIK/KMCD Fairfield, Iowa: bookkeeping, reception duties, invoicing, traffic, office duties, and network coordination in addition to possibly accounts payable. TR 64-65.

32. She will resign her employment following grant of Rivertown's application and prior to its commencement of operation. Rivertown Ex. 3.

33. Bowen has never spoken with Rivertown's Iowa counsel, David Miller, with regard to its application. Brown has had all of the dealings with Mr. Miller. TR 47. Bowen did not review any drafts of Rivertown's Articles of Incorporation before they were filed with the Iowa Secretary of State. TR 48. Bowen has never spoken with Rivertown's consulting broadcast engineer about Rivertown's construction permit application. The first time that Bowen spoke with Rivertown's communications counsel, Donald Ward, was the day before her deposition in April 1993. TR 49.

34. Rivertown's application is being funded by loans from John Pritchard, Bowen's husband, David, and Brown. TR 50. Bowen had no discussion with Pritchard about his financing arrangements with Rivertown, allowing Brown to handle all aspects of arranging the loan. TR 50. Bowen did not see the Pritchard loan agreement at the time it was signed in 1991 and, at the time of her deposition on April 2, 1993, she did not know whether money advanced by Mr. Pritchard was to be a gift or a loan, and could only assume that it would be for a loan. TR 56-58 The only money that Bowen has advanced to Rivertown is \$45 in payment for her stock; she is not personally responsible to repay any loans made to Rivertown. TR 58-59.

35. Rivertown's construction and operating budget was prepared by Brown. Bowen provided no numbers for inclusion in that budget. TR 62. Bowen did not see Rivertown's proposed tower site until about one month prior to the hearing, does not know its size and has never spoken with its owner, Mr. Benson. TR 63. Bowen had no participation in establishing Rivertown's public inspection file or in making the newspaper publications concerning Rivertown's application. TR 64. Bowen made deposits and wrote checks on the Rivertown checking account. TR. 59.

36. Bowen's husband, David Bowen, has been present at most of her meetings with Brown, and was present in the hearing room during his wife's testimony. TR 50, 67. Mrs.

Bowen and Brown have had more than one discussion that David Bowen will be involved in constructing Rivertown's Eldon station. TR 68. Together, Brown and David Bowen purchased Brown's Eldon residence at 517 West Elm in October 1991. TR 89. David Bowen has performed maintenance on the building; which is the same building proposed to be Rivertown's main studio. TR 70, 94.

37. Ellen Bowen has resided within Rivertown's proposed service area since 1979. Her civic activities include membership in the First Assembly of God, Fairfield, Iowa. Rivertown Ex. 3. There was no reference to any civic activity at all for Bowen in Rivertown's construction permit application on the amendment-as-of-right date.³

38. Bowen's broadcast experience consists of employment at Stations KMCD(AM) and KIIK(FM), Fairfield, Iowa, from July 1986 to July 1989. Rivertown Ex. 3.

B. Sample's Basic Qualifying Issues

39. The relevant facts for the qualifying issues against Sample are intertwined. To avoid needless repetition, the following findings of fact apply to all the basic issues added against Sample.

40. Mark McVey, ("McVey") is a 20% voting shareholder, officer, director and chief engineer of O-Town Communications, Inc., licensee of FM station KKSI Eddyville, Iowa. He

³ See, Attachment 1, hereto.

believed that O-Town would be a more valuable company if it owned more stations. Sample Ex. 5, TR. 304.

41. McVey frequently notifies Bruce Linder of filing windows for new channels in hopes that they would be willing to expand the corporation's holdings. For example, he suggested filing opportunities for new FM channels at Arkansas City, Kansas, and at Albia and New Sharon, Iowa. The Albia and New Sharon allotments were made by the Commission in December 1991 for Class C3 facilities within the 1 mV/m contour of KKSI. TR 261-262. These suggestions were not pursued by the company, however. These notifications usually occur by phone. McVey speaks with Donald Linder about KKSI business only about five times per year. Sample Ex. 5, p. 2; TR. 237.⁴

42. McVey first learned of a proposal to allot an FM channel to Eldon in the Spring of 1991 from Ben Evans, a consulting engineer whom he contacted while searching for a possible FM translator frequency for KKSI. He learned subsequently that the FCC had actually allotted a channel to Eldon. TR. 237. After learning of the allotment, McVey thought immediately that the Eldon station could be a good business opportunity for O-Town. McVey believed it would be

⁴ In addition to being the sole limited partner of Sample, Bruce Linder is Secretary, Treasurer, a director and a 25% shareholder of O-Town. The other principal of O-Town is Donald Linder, President and a 55% voting shareholder. KKSI is a Class C2 station. Eddyville is situated about 35 miles from Eldon.

possible to operate it jointly with KKSI, to achieve economies of scale. Sample Ex. 5, p. 1; TR 231, 241, 242, 244.

43. In April 1991, William D. Collins was employed by Station KKSI. According to Collins, McVey said at that time, "We ought to get Carmela (Sample) to file on that (Eldon) frequency, and then what we ought to do is tie them together so you would have KKSI-FM from here to the Mississippi River." Collins did not understand McVey to be serious. Rivertown Ex. 5, para. 1.

44. McVey and Brown have been friends for roughly ten years and have worked together on many projects. Sample Ex. 5, p. 6. In June 1991, McVey had a conversation with Brown in which they talked generally about how radio stations operate. During this conversation, Brown claims that McVey mentioned Brown's pending petition to allot a channel to Eldon, and suggested that Brown consider rebroadcasting KKSI if he were awarded the Eldon permit. Brown responded that it was too early to think about that and asked whether the Linders were aware of the Eldon allotment petition. McVey said that they were. Brown asked if they planned to file an application for Eldon, and McVey responded that he didn't know. Sample Ex. 5, p. 4; Rivertown Ex. 4, para. 2. McVey's recollection of this conversation is not good in that it occurred about two years ago. Sample Ex. 5.

45. It is possible that the potential new FM station at Eldon was mentioned during the 1991 conversation as it was one

of Brown's projects. If such were the case, McVey assumes that he likely would have remarked that start-up operations can be very expensive, as he learned from his own experience in building KKSI. In 1991, he was familiar with local marketing agreements, known as LMAs, which were beginning to be used by stations as a way of keeping their costs down. McVey believes he suggested to Brown that, in his opinion, it could make sense for any new permittee at Eldon, including Brown, should he receive the construction permit, to consider a programming arrangement with a station such as KKSI. McVey thought that it might make sense for KKSI to consider such an arrangement because it would give the station a broader coverage area. Although an officer of O-Town, McVey emphasizes that any conversations he had with Brown were not in an official corporate capacity. McVey has no authority to make station policy on his own, and was not authorized to speak for KKSI. McVey had not spoken to anyone connected with KKSI about this subject prior to his conversation with Brown in 1991; anything he might have said then was strictly his own brain-storming. In June 1991, before the channel was allocated, McVey had no idea who might apply for and become the permittee at Eldon, or what their programming plans might be for the station. Sample Ex. 5, p. 5.

46. McVey knew that the FCC had a policy which prohibited common ownership of FM stations with overlapping city-grade signal contours, and thought that this might be a

consideration should O-Town want to pursue the channel. Without discussing the matter with anyone once the Eldon channel was allotted, he called Owl Engineering and commissioned a study to determine whether it would be possible for O-Town to own both stations without violating the city-grade contour overlap prohibition. He first received an area to locate map in early August. This map simply indicated the area where a transmitter site for the Eldon station might be located to avoid short-spacing to other stations. It did not consider KKSI's contour. About a week later he received a second map showing the area to locate an Eldon site to avoid city-grade overlap with KKSI. This showed a reasonably large area toward the southeast. Rivertown Ex. 6, 7; TR. 264.

47. After receiving the second map, which verified that O-Town could own the Eldon station without contour overlap with KKSI, McVey called Bruce Linder and mentioned his interest in having O-Town pursue this allotment. Mr. Linder did not act interested. TR. 243-245, 247. McVey did not consider applying for the station in his own name because he did not have the necessary financial resources and did not believe he could obtain them. Sample Ex. 5, p. 1-2. McVey did not consider joining with Sample-Day in an application; he may have discussed with others the possibility of joining in an Eldon application. TR. 249.

48. Although Bruce Linder was not interested in personally pursuing the channel, he thought that O-Town might be

interested. He asked either Garret Lysiak of Owl Engineering or McVey whether there would be city-grade service contour overlap between KKSI and the new Eldon station. TR. 304. From his broadcast knowledge, Linder believed that the FCC had policies (at that time) prohibiting people from having an active interest in more than one FM station with overlapping city-grade signal contours, and wanted to know if this would be a concern should O-Town decide to pursue the Eldon channel. TR. 314. Linder believes that McVey informed him verbally that it was possible to locate the Eldon station so that its city-grade contour would not overlap that of KKSI. Shortly after learning of the Eldon allotment Linder asked Donald Linder, his father, whether he wanted to pursue the Eldon channel as an opportunity for himself or for O-Town. Donald was not interested. As a result, Bruce let the matter drop for a while. Sample Ex. 3; TR. 305.

49. After some time, Linder reconsidered his initial reaction toward the Eldon channel. He thought that it had some investment possibilities after all, and might be worth the risk of a start-up small business. He also decided that personally overseeing the Eldon operation would divert too much of his energies and attention from his required duties for KMHL Broadcasting Company, his employer in Mankato, Minnesota, and with the management at station KKSI. Linder decided that he would pursue the Eldon station only if he could combine with a qualified person who would be the active

principal at the station. He wanted only a passive investment interest; one that would not require his time or attention. Sample Ex. 3.

50. Linder met Sample-Day in late 1990 or early 1991, a few months after she started working at station KKSI. Through her employment there, Linder observed that she is very good at working with others and is resourceful, competent and someone who has the ambition and ability to handle a start-up business and could make a good business partner. Sample Ex. 3. They had a number of formal and informal opportunities to get to know one another, including working together on making a film in the Spring of 1991. TR. 301-302. He decided that Sample-Day might be someone he could trust to run the station. He arranged to visit her to discover the possibility of the two of them joining forces to apply for the station. He had planned to mention the topic to her when she raised it first. TR. 306.

51. Sample-Day learned about the channel allotment at Eldon from reading an article in a local newspaper in the summer of 1991. Prior to reading the article she may have been aware that the allotment had been proposed to the Commission. TR 113. Upon reading the newspaper article, she became very curious about the Eldon opportunity and considered filing for the Eldon facility as a sole proprietor. Two people with whom she spoke about the Eldon station were Bruce Linder and McVey. Sample Exs. 2, 3; TR. 140.

52. Sample-Day approached McVey and said that she was interested in filing for the Eldon channel. She had known him through working at station KKSI and was aware that he had been involved in the initial filing for the station. She respected his knowledge. She asked him to describe what was involved in the process, and whether he thought that the Eldon channel was a good idea. McVey told her that he thought that it was a good idea and had wanted O-Town to file for the channel. Sample Ex. 5, p. 2. McVey suggested some places where Sample-Day should look for names of engineers and consultants after she had indicated that she was interested in the Eldon channel. TR. 253-254, 276.

53. Sample-Day had wanted to get into station ownership for quite some time. After she came to work at KKSI she would talk to McVey about his experience from time-to-time. McVey described the process of how to get into broadcast ownership because he wanted to be helpful. TR 251. McVey recalls discussing with Sample-Day that John and Donald Linder financed the Eddyville station. He does not recall telling her that she should seek out the Linders as a financial source for her application. TR. 255

54. At a luncheon meeting, Sample-Day broached the subject of the Eldon allotment to Bruce Linder and asked him if he knew what was involved in the application process. This was his first definite clue that Sample-Day had an interest in getting into ownership of the Eldon station. He gave her a

very general overview of the steps involved. She then asked him if he was interested in the Eldon channel and would be willing to consider joining with her in applying for and pursuing the Eldon station. TR. 141.

55. Linder told Sample-Day that he might be interested in joining with her in an application, but only as a passive investor with no responsibility for the management or operation of the business or the radio station. Linder told Sample-Day that he did not want to be involved with applying for or running the station, and would not be able to help her. He wanted her to take the responsibility and do the work needed for the station and the application. TR. 311.

56. If he were a general partner, he believes he would be expected to be involved. TR. 312. On the other hand, assuming the role of a passive limited partner would communicate to Sample-Day that she would have the entire responsibility for preparing and prosecuting the application and operating the station. Linder also knew that it was very important for FCC purposes that he have no active participation with the application or the radio station. TR. 317. He anticipated other applicants for the construction permit and he did not want a weak comparative application. Sample Ex. p. 3; TR. 307.

57. Linder offered to secure the financing for the project if they went ahead. They discussed that he had resources to finance a commitment of that nature. TR. 319. They made no decision at that meeting about joining together

for the Eldon project, but agreed to talk again. TR. 141 During several subsequent discussions, they talked about radio station operation, programming and formats. They discussed the general requirements of preparing and filing a construction permit application, the risks involved with a startup business and whether the Eldon channel was worth pursuing. Sample Ex. 2, p. 3; Sample Ex. 3.

58. To get to know Sample-Day even better, he asked Sample-Day about her goals, aspirations, and employment history. It was most important to Linder that he be able to trust Sample-Day, because she would be responsible for making all decisions for the joint venture and the Eldon station. Through their discussions, she learned that many of their ideals and interests complemented each other. She believes him to be intelligent and trustworthy. She has always felt comfortable with him. Sample Ex. 2, p. 2.

59. Sample-Day took some time to consider her options and interests further to make sure that she was prepared and committed to undertake the responsibility of forming and being in charge of this new business. After a few days of consideration, she decided that she wanted to pursue the Eldon construction permit. The Eldon station would be a career and business opportunity for her and a chance to build a business in her field in the same general area where she was born and her father had been a member of the business community. Sample Ex. 2, p. 3.